IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

Crl.Rev.Pet.No. 91 of 1998(A)

CRA.137/1994 of II ADDL. SESSIONS COURT, PALAKKAD
CC.295/1992 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, PALAKKAD

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REVN. PETITIONER: APPELLANT/ACCUSED

BALAN, S/O.MAMDHAVAN
KARAPPADAM
KIZHAKKANCHERRY
ALATHUR, PALAKKAD.

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.T.G.LELLULAL

RESPONDENT: RESPONDENT/COMPLAINANT

STATE OF KERALA
REPRESENTED BY THE SUB INSPECTOR OF POLICE
VADAKKANCHERRY THROUGH THE DIRECTOR OF
PUBLIC PROSECUTION
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/06/2007, ALONG WITH CRRC NO. 1 OF 2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRRP91/98

ORDER ON CRL.M.P.NO.602/1998 IN CRL.R.P.NO.91/1998

DISMISSED

18.6.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.91/1998

&

Crl.R.C.No.1/06

Dated this the 18th day of June, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 377 IPC and sentenced to undergo R.I. for one year. Crl.R.P.No.91/98 was taken suo-motu by this court as the sentence did not include fine which is mandatory for the offence under Section 377 IPC.

2. The prosecution case is that on 1.9.1992, at about 4 p.m., the accused in his stationery shop cum residence at Karapadam, Kizhakkancherry committed unnatural offence against PW1, the victim aged 8 years. The evidence adduced in the matter consisted the testimony of PWs' 1 to 11, Exts. P1 to P6 and MOs' 1 to 3. The prosecution witnesses i.e., PW1, the victim, along with her parents, PW2 and PW5, have testified in support of the prosecution version. PW4, another girl who has allegedly witnessed PW1 standing outside the stationery shop of the accused and weeping did not support the prosecution and

was treated as hostile. Of course, PW1 mentioned as aged 9, at the time of her examination has testified as to the incident that she went to the shop of the accused which is situated adjacent to the house of the victim. After she returned from the school and had meals and went to the shop of the accused to purchase toffee and that the accused while she was eating the sweets called her inside the shop and removed her undergarment and had carnal intercourse with her against the order of nature. After sometime, a sticky matter came out and the accused wiped it off. She has stated that she was crying through out and after the incident as well. A number of people including PW4, Ambili, passing through the road had seen her crying. According to her, she had pain in her abdomen. The FIS was rendered on 3.9.1992 at 9 p.m. It is her version that she was afraid to tell about the incident to her father and on the next day in the afternoon she told the same to the mother and hence the delay.

3. PW2, the mother has stated that PW1 had pain at the time of urination and then she told her about the incident. PW5, the father has stated that it was on the next day of the incident

that PW1 mentioned about the incident to the mother i.e, PW2, that she had pain at urinating. She has brought out in the cross examination of PW1 that this aspect of the matter that she had pain is not mentioned in the FIS. PW9 is the doctor who examined PW1 on 3.9.1992 at 11 p.m. as directed by the police and issued Ext.P6 certificate. It is mentioned in Ext. P6 that there was no injuries in the private parts. She complained of pain in the lower abdomen. PW6 is the doctor who examined the accused and issued Ext. P3 potency certificate.

4. Counsel for the revision petitioner has pointed out that the evidence of PW1, the victim, who is the only direct witness as to the incident contained a number of infirmities and the same cannot be relied upon exclusively to enter upon a conviction. Apart from the delay, it is pointed out that the time of the incident mentioned would not tally with the school timings. It is pointed out that PW1 has admitted that the school closes at 4 p.m. and that the school is situated at 1 k.m. away from the residence. After returning home, she had a meal and then went to the shop. Hence, the time mentioned as at about 4

p.m. can never be correct. It is further pointed out that PW1 has stated in the cross examination that she has affixed the signature in a blank paper at the police station. Although, the court has noted that in answer to court question she has stated that she signed in a written paper. It is pointed out that the deposition did not contain the question or the answer as such, but the observation of the Magistrate. It is further pointed out that no attempt is made by the court to ascertain as to whether PW1 was in a position to realise the significance of oath and that it is mandatory.

5. I find that it is also seen that the material objects i.e., undergarment of the girl, dothi and undergarment of the accused which were seized were not subjected to chemical examination. No explanation for the same has been mentioned by PW11, the Investigating officer. The investigating officer ought to have forward the dress for chemical analysis to detect seminal stains, if any. It is pointed out that it is admitted by PW1 that police had conducted a search in her house some time back. The suggestion is that PW2, the mother is engaged in illicit

distillation and that the parents were having enmity towards the accused as it was suspected that he has intimated the police.

6. Although, the evidence of the victim if sufficient to enter upon a conviction in cases of this nature in which independent evidence would not be available in all cases, I find that the evidence in the instant case is not convincing enough. I find that the delay of two days in lodging the FIS of course is not fatal. But the infirmities pointed out by the counsel for the revision petitioner stands unexplained. I find that in the circumstances, the accused is entitled to benefit of doubt. The findings of the court below are set aside. The accused is acquitted.

The criminal revision petitions are disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl